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IN THE

Supreme Court of the United States

October Term, 1966
No. 757

JOHN MARSHALL,

Petitioner,

vs.

GRANT SAWYER, etc., *et al.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION.

WILLIAM B. BEIRNE,
408 South Spring Street,
Los Angeles, Calif. 90013,

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles, Calif. 90012,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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Respondents'[1] statement (p. 12) that "it must be the contention of Petitioner that he has, in the first instance, a constitutional right to enter a gaming establishment and *partake in the activities conducted therein,*" (emphasis added) is misleading and obfuscates the issue which is before this Court. At no time has petitioner contended that he has the right to gamble or even to be in a gaming room. The issue in this case is whether the State can prevent a citizen from being in the *non*-gaming portions of vast facilities open to the public

[1]By this designation, petitioner refers to the State respondents to whose memorandum in opposition this is a reply. The non-State respondents have filed no memorandum.

and to partake in the *non*-gaming activities offered—all without a showing of any necessity, vis-a-vis, protection of gambling, and without even a contention, much less a showing, that the (to this date unidentified) evil at which the State has directed its prohibition cannot be achieved by more narrow, less drastic means.

Because petitioner is not contending for the right to gamble or to be in a gambling area, he insists, as he did in both courts below that this is not a gambling case, a contention which the Court below disposed of as being "without relevance." [C. T. 224; Appx. D to Petition, p. 56.] Petitioner respectfully disputes this. His contention goes to the very heart of the issue before this Court.

Respondents suggest (p. 24) instances in which "criminals have been the subject of (presumably valid) class legislation." Without going into particulars which show that respondents' broadside generalization is not accurate (*cf. Otsuka v. Hite,* 64 A.C. 652, 51 Cal. Rptr. 284, 414 P. 2d 412, holding that a person convicted of the felony of violation of the Selective Service Act could not be denied the right to vote, and *In re Hallinan,* 43 Cal. 2d 143, 272 P. 2d 763, holding that the mere fact of a felony conviction for violation of the Internal Revenue Code was not sufficient for disbarment of an attorney), suffice to say that none of the examples mentioned by respondents even remotely sustains or goes to the proposition that the *State* can deny a citizen—any citizen—the right to peaceful and lawful

access to ordinary places of public accommodation. Such drastic Governmental action, represents an ominous and startling concept. It bears scrutiny by this Court.

Conclusion.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM B. BEIRNE,
A. L. WIRIN,
FRED OKRAND,
Attorneys for Petitioner.